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**STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
OFFICE OF HEARINGS AND APPEALS**

In the Matter of)	
)	
[REDACTED] ,)	OHA Case No. 08-FH-927
)	
Claimant.)	Division Case No. [REDACTED]
_____)	

FAIR HEARING DECISION

STATEMENT OF THE CASE

[REDACTED] (Claimant) was receiving Alaska Temporary Assistance (Temporary Assistance) benefits in November 2008. (Ex. 1.0) The Division of Public Assistance (Division) sent him a November 10, 2008 written notice his Temporary Assistance benefits would be terminated as of December 31, 2008. (Ex. 2.1) The Claimant requested a fair hearing on December 16, 2008. (Ex. 3.0) This Office has jurisdiction pursuant to 7 AAC 49.010.

Pursuant to Claimant's request, a hearing was originally scheduled for January 27, 2009. It was postponed at the Claimant's request until February 10, 2009. The Claimant's hearing began on February 10, 2009. The hearing was continued, at the Claimant's request, until March 10 and April 21, 2009. The Claimant appeared telephonically and represented himself on February 10, March 10, and April 21, 2009.

[REDACTED], Public Assistance Analyst with the Division, attended in person on all hearing dates. She represented the Division and testified on its behalf.

ISSUE

Was the Division correct to terminate the Claimant's Temporary Assistance benefits as of December 31, 2008 because he had received 60 months of Temporary Assistance benefits and did not qualify for an extension to the Temporary Assistance program's 60 month lifetime limit?

FINDINGS OF FACT

The following facts are established by a preponderance of the evidence.

1. The Claimant receives Temporary Assistance benefits. (Ex. 1) He has one son living with him, who became [REDACTED] years old on [REDACTED]. *Id.*
2. The Division calculated that as of December 2008, the Claimant would have received Temporary Assistance benefits for a total of 60 months. (Ex. 2.2)
3. The Division sent the Claimant 8 written notices, beginning in June 2006, informing him that he could only receive Temporary Assistance benefits for a total of 60 months. (Exs. 2. 4 – 2.11)
4. On October 18, 2008, the Claimant requested that he receive Temporary Assistance benefits beyond the 60 month time limit for the following reasons: "find fulltime employment, son's in school, grad's. [Division of Vocational Rehabilitation] this year. Don't want to loose my house. Did not finish high school. Have learning disability." (Ex. 2.24)
5. The Claimant's caseworker, [REDACTED], attempted to discuss extending the Claimant's Temporary Assistance benefits beyond 60 months with him on October 31, 2008. (Ex. 2.23) Her notes state "[w]e attempted to review extension criteria's with [Claimant] but he stated he understood and declined the discussion." *Id.*
5. On November 10, 2008, the Division sent the Claimant written notice his Temporary Assistance benefits would be terminated as of December 31, 2008, because he had received his "life time limit of 60 months of assistance." (Ex. 2.1) That same notice informed the Claimant he could request an extension and what reasons would justify an extension. *Id.*
6. The Claimant requested a fair hearing challenging the termination of his Temporary Assistance benefits on December 16, 2008. (Ex. 3.0)
7. At hearing, the Claimant was asked about whether he fit the various regulatory criteria for extending his Temporary Assistance benefits beyond the 60 month lifetime limit. He responded as follows:

- a. He is not a current or recent victim of domestic violence.
- b. While he had been on disability a number of years ago, he is not currently disabled.
- c. While he is currently unemployed, he is able to work.
- d. He and his son have housing and food.
- e. His son is not disabled.
- f. He wanted only to receive Temporary Assistance benefits until his son graduates from high school in May 2009.

PRINCIPLES OF LAW

This case involves the termination of benefits. When the Division seeks to terminate benefits, the Division has the burden of proof¹ by a preponderance of the evidence.²

Temporary Assistance is a benefit program provided to financially eligible families with minor children. AS 47.27.010. A family may not normally receive Temporary Assistance benefits from any state (or states) for a total period of more than 60 months (lifetime limit). AS 47.27.015(a)(1).

The Temporary Assistance program rules allow an exception to the 60 month lifetime limit when domestic violence, physical or mental inability to work, or caring for a disabled child or relative, interfere with a recipient's ability to work. *See* AS 47.27.015(a)(1)(A)-(C); 7 AAC 45.610(d) – (f). The Temporary Assistance program rules also allow an exception to the 60 month lifetime limit for family hardship. AS 47.27.015(a)(1)(D); 7 AAC 45.610(g).

Hardship is defined as “a family experiences circumstances outside of its control that prevent the caretaker relative from participating in work activities or becoming self-sufficient, and the loss of ATAP benefits would result in conditions that threaten the health or safety of the family.” 7 AAC 45.990(c). Hardship includes a lack of “sufficient income or resources to provide for housing, food, transportation, or other essential needs.” 7 AAC 45.610(g)(2)(A).

¹ “Ordinarily the party seeking a change in the status quo has the burden of proof.” *State, Alcohol Beverage Control Board v. Decker*, 700 P.2d 483, 485 (Alaska 1985)

² Preponderance of the evidence is the normal standard of proof in an administrative proceeding. *Amerada Hess Pipeline v. Alaska Public Utilities Comm'n*, 711 P.2d 1170, n. 14 at 1179 (Alaska 1986). Preponderance of the evidence is defined as “[e]vidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.” Black’s Law Dictionary 1064 (5th Ed. 1979)

DISCUSSION

The Claimant was residing with his minor son, who was ■ years old, when he reached the Temporary Assistance program's 60 month lifetime limit, at the end of December 2008. Because he had then reached the Temporary Assistance program's 60 month lifetime limit, he would only be eligible to continue to receive Temporary Assistance benefits if he was eligible for one of the exceptions listed in the applicable statute and regulation, AS 47.27.015(a)(1) and 7 AAC 45.610(d)- (g).

During the hearing, the Claimant was asked whether he qualified for the various exceptions to the Temporary Assistance program's 60 month lifetime limit. He said he was able to work. In addition, he did not claim that his family (he and the son residing with him) was disabled, homeless, or without food.

The Claimant's motivation for challenging the Division's determination that his Temporary Assistance benefits should be terminated, effective December 31, 2008, was clear. He wanted to receive Temporary Assistance benefits until his son graduated from high school, in May 2009. However, the Claimant's desire that he receive Temporary Assistance benefits until his son graduated from high school does not fall within one of the allowable exceptions to the Temporary Assistance program's 60 month lifetime limit rule.

The Division has met its burden of proof and established, by a preponderance of the evidence that the Claimant does not qualify for an extension to the Temporary Assistance program's 60 month lifetime limit. The Division was correct to terminate the Claimant's Temporary Assistance benefit when he reached his 60 month lifetime limit, which occurred on December 31, 2008.

CONCLUSIONS OF LAW

1. The Claimant was not eligible to receive Temporary Assistance benefits after December 31, 2008, because he had then used 60 months of Temporary Assistance benefits, unless he was eligible for one of the hardship exceptions to the Temporary Assistance program's 60 month lifetime limit.
2. The Claimant was not eligible for an extension of his Temporary Assistance benefits beyond December 31, 2008, because he did not qualify for any of the hardship exception categories. He was able to work, neither he nor his son were disabled, and they had shelter and food.
3. The Division was therefore correct when it terminated the Claimant's Temporary Assistance benefits as of December 31, 2008.

DECISION

The Division was correct when it when it terminated the Claimant's Temporary Assistance benefits as of December 31, 2008.

APPEAL RIGHTS

If for any reason the Claimant is not satisfied with this decision, The Claimant has the right to appeal by requesting a review by the Director. To do this, send a written request directly to:

Director of the Division of Public Assistance
Department of Health and Social Services
PO Box 110640
Juneau, AK 99811-0640

If the Claimant appeals, the request must be sent within 15 days from the date of receipt of this Decision. Filing an appeal with the Director could result in the reversal of this Decision.

DATED this 15th day of May 2009.

Larry Pederson
Hearing Authority

CERTIFICATE OF SERVICE

I certify that on this 15th day of May 2009, true and correct copies of the foregoing were sent to:

Claimant by First Class Mail, Certified, Return Receipt Requested.

And to the following by email:

[REDACTED], Fair Hearing Representative
[REDACTED], Director
[REDACTED], Director's Office
[REDACTED], Policy & Program Development
[REDACTED], Policy & Program Development
[REDACTED], Staff Development & Training

Al Levitre, Law Office Assistant I